REMARKS

The application has been reviewed in light of the outstanding Office Action dated December 19, 2005. Claims 1-13, 15-20, 22-24, 44-52 and 56-59 are currently pending. Claims 14 and renumbered claims 25-43 were previously canceled without prejudice and/or disclaimer of subject matter. Claims 11-13, 21 and 53-55 have now also been canceled without prejudice and/or disclaimer of subject matter. Claims 1, 19, 44-52 and 56-69 have been amended. Claims 1, 19 and 44 are independent. Each of the points raised in the outstanding Action are addressed below.

Rejection of Claims 11-13, 21 and 53-55

Rejections of claims 11-13, 21 and 53-55 noted in the outstanding Action are now rendered moot in view of the cancellation of these claims.

§112, Second Paragraph Rejection

Claims 44-59 were rejected under 35 U.S.C. §112, second paragraph as being indefinite, in that the Examiner is unclear as to whether the claims are directed to an apparatus or a method. Applicants respectfully submit that claims 44-52 and 56-59 have been amended to better point out that these claims are directed to an apparatus (e.g., a server), which includes one or more programs operational thereon. The programs are operation to allow certain claimed functionality recited in the claims. Accordingly, Applicants submit that the claims meet all the requirements of §112, second paragraph, and respectfully request that this rejection be withdrawn.

§101 Rejection

Claims 44-59 were rejection under 35 U.S.C. §101, as being directed to non-statutory subject matter. The Examiner alleges that claims 44-59 are intended to embrace two different statutory classes. While Applicants are of the opinion that the former un-amended claims covered two statutory classes of invention, Applicants respectfully submit that amended claims have deleted any language directed to the term "method", and submit that claims 44-52 and 56-59 conform to a single statutory class. Withdrawal of this rejection is now respectfully requested.

Prior Art Rejection of The Claims

Claims 1-10, 15-20, 22-24, 44-52 and 56-59 were rejection under 35 U.S.C. §102 as being anticipated over U.S. patent no. 6,134,534 (Walker et al.). For the following reasons, Applicants submit that the claimed invention is patentable over the cited art.

Amended independent claim 1 is directed to an offer and acceptance method including dynamically generating an initial offer to a customer including a dynamically generated price for a product and/or service based upon the perishability of the product and/or service and pushing the offer to the customer via a wireless mobile device. Amended independent claims 19 and 44 recited similar patentable features.

In the present invention, vendors can, for example, utilize wireless mobile devices for pushing offers to customers for products and services which, for example, go unused (i.e., perishable). For example, a vendor may be an airline who generates an offer for a coach seat on a flight which is scheduled to depart within a predetermined time period (e.g., hours/days prior to the departure time of the flight). Accordingly, the service is perishable as it will no longer be available after the departure of the flight and, moreover, the product/service is underutilized (seats available). The offer is provided via a wireless mobile device since such device (e.g., mobile phones) are generally with the customer.

Based on the perishability of the product/service, the price for the product/service may be for a substantial discount (for example) off the regular cost of the seat due to the perishable nature of the product/service.

After a thorough review of the cited prior art, Applicants could find no disclosure, teaching or suggestion of dynamically generating an initial offer to a customer based on the perishability of the product or service being offered, and pushing the offer to the customer via a wireless mobile device. There is simply no such disclosure, teaching or suggestion in Walker et al. Even assuming, *arguendo*, that Walker et al. discloses pushing an offer to a customer, which Applicants submits that Walker et al. does not, it is the customer who makes the initial offer in Walker et al., and it is only when the offer is accepted by a plurality of sellers in Walker et al., that multiple are sellers allowed to "market" and "post-sell" their product.

It is Applicants' claimed invention that vendors/sellers dynamically generate offers based on perishability, and push initial offers to customers, at which point the customer can determine to accept the offer. Moreover, especially with respect to claim 22, upon a customer being in a certain geographical area (real-time location as claimed in claim 22) near a certain vendor, the vendor can dynamically generate and push offers to the customer since they are located in the area of the vendor's store (for example). The Action merely cites to a section of Walker et al. discussing general knowledge of wireless networks - not to dynamically generating an offer ***based on*** the real-time location of the customer obtained from his wireless device/network.

For at least the above-noted reasons, claim 1, 19 and 44 are patentable over the cited prior art. Since the remainder of the art of record fails to meet the deficiencies of Walker et al., Applicants respectfully submit that these claims are also patentable over the prior art of record.

The remainder of the claims, being dependent from one or another of the distinguished independent claims are also patentable for the same reasons.

Accordingly, Applicants respectfully request that the prior art rejections of the claims be withdrawn.

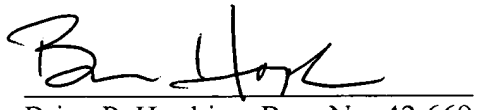
CONCLUSION

In view of the foregoing remarks, Applicants submit that all the issues raised in the outstanding Action have all been addressed. Accordingly, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

No fee is currently due, save for the fee for the extension of time, for the present response. However, in the event that it is determined that additional fees are due, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0311.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 935-3000. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



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